

**DURHAM, NORTH CAROLINA
TUESDAY, SEPTEMBER 2, 2003
7:00 P.M.**

The Durham City Council met in regular session on the above date and time in the Council Chambers at City Hall with the following members present: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Absent: None.

Also present: City Manager Marcia Conner, City Attorney Henry Blinder, City Clerk D. Ann Gray and Deputy City Clerk Linda Bratcher.

Mayor Bell called the meeting to order with a moment of silent meditation and the Pledge of Allegiance.

The Mayor read a proclamation declaring the month of September as Childhood Cancer Month.

The Mayor asked for priority items from the City Manager, City Attorney and City Clerk. Assistant City Manager Laisure requested that an item be added to the agenda [Asbestos Removal and Demolition of Sixteen Structures on Barnes Avenue and 3603 Mossdale Avenue] and provided additional information for GBA Item #37 [Lease of Burton Park to DHA].

There were no priority items from the City Attorney.

City Clerk Gray informed Council that the valid protest petition filed against GBA Item #34 [Rezoning Case P02-75 -Abernathy Tract] has been withdrawn.

Council Member Clement congratulated the Durham Bulls on winning the South Division Championship and recognized Rev. Michael Page for being appointed as Chairman of the Durham Public Schools Board.

Council Member Cole-McFadden requested that a follow-up meeting be scheduled to discuss the evaluation of Council employees. Also, she asked her colleagues to read the article entitled "*City Council Service – A Full-Time Job*" published in the August 18, 2003 edition of NATION'S CITIES WEEKLY.

[ITEM ADDED TO AGENDA]

**SUBJECT: ASBESTOS REMOVAL AND DEMOLITION OF SIXTEEN
STRUCTURES ON BARNES AVENUE AND 3603 MOSSDALE
AVENUE - ARM CONSTRUCTION COMPANY INC.**

Richard Valzonis, of the Housing Department, briefed Council on this item.

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Council held discussion on funds, structure on Mossdale, contractor and contract.

MOTION by Council Member Clement seconded by Council Member Stith to authorize the City Manager to enter into a contract with ARM Construction Company Inc. to provide asbestos and demolition services for sixteen structures on Barnes Avenue and the structure located at 3603 Mossdale Avenue in the amount of \$52,834; and

To authorize the City Manager to make changes to the contract with ARM Construction Company Inc. such that the scope of work is not reduced and the contract amount is not increased was approved at 7:15 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

Mayor Bell asked if any citizen(s) or council member(s) wanted to pull any items from the Consent Agenda. **[NO ITEMS WERE PULLED]**.

Relative to Consent Agenda Item #4 [Contracts], Council Member Stith disclosed his involvement with contract #2 [Progress Telecommunications] through his work relationship, but has no direct benefit in this matter.

MOTION by Mayor Pro Tempore Cheek seconded by Council Member Stith to approve the Consent Agenda was approved at 7:21 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

[CONSENT AGENDA]

SUBJECT: APPROVAL OF CITY COUNCIL MINUTES

MOTION by Mayor Pro Tempore Cheek seconded by Council Member Stith to approve City Council minutes for the following meetings was approved at 7:21 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

July 29, 2003 - Special Meeting
August 4, 2003 - Regular Meeting
August 11, 2003 - Special Meeting

MOTION by Mayor Pro Tempore Cheek seconded by Council Member Stith to approve City Council action taken at the August 7, 2003 City Council Work Session was approved at 7:21 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

SUBJECT: DURHAM HOUSING AUTHORITY - RECEIPT AND ACCEPTANCE OF APPLICATIONS

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MOTION by Mayor Pro Tempore Cheek seconded by Council Member Stith to receive and accept applications to fill one (1) vacancy on the Durham Housing Authority with term expiring September 28, 2008 was approved at 7:21 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

SUBJECT: MULTI-JURISDICTIONAL ADVISORY BOARD - RECEIPT AND ACCEPTANCE OF AN APPLICATION

MOTION by Mayor Pro Tempore Cheek seconded by Council Member Stith to receive and accept an application for a citizen to fill one (1) vacancy for a community representative on the Multi-Jurisdictional Advisory Board with term expiring April 1, 2004 was approved at 7:21 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

SUBJECT: CONTRACTS

MOTION by Mayor Pro Tempore Cheek seconded by Council Member Stith to authorize the City Manager to execute contracts listed below; and

To authorize the City Manager to make changes to contracts before execution as long as the changes do not increase the dollar amount and remain consistent with the general intent of the contracts was approved at 7:21 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

Contracts Submitted for Council Approval Council Work Session 8-21-03			
Contractor	Contract Description	Dept	CT Amt
Williams Const Co.	Stormwater Maintenance & Facility Agreement	PW	na
Progress Telecommunications	IRU for 911 Backup center fiber optic cable	TS	\$10,500.00 (already paid)
Verizon Corp	Verizon Data Maintenance	TS	\$20,254.12
Hishan Heda	Soccer Official	P&R	\$2,500.00
Ed Craver	Soccer Official	P&R	\$2,500.00
Leslie Sparks	Soccer Official	P&R	\$2,500.00
Jeffrey Norris	Soccer Official	P&R	\$2,500.00
Constance Odum	Summer Concert	P&R	\$300.00
Rena Clements	Summer Concert	P&R	\$300.00
Mario Toomer	Summer Concert	P&R	\$200.00
Kristen Bell	Ballet Instructor	P&R	\$1,092.00
Rachel Wilson	Senior computer Instructor	P&R	\$700.00
Cary Psychology	Contract Amendment-time Extension	Police	\$4,000.00

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Motorola Inc	Mobile software maintenance	Police	\$24,847.00
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SUBJECT: PIGGY-BACK CONTRACT – ESTIMATED ANNUAL REQUIREMENTS FOR LIQUID SODIUM HYDROXIDE - JCI JONES CHEMICALS, INC.

MOTION by Mayor Pro Tempore Cheek seconded by Council Member Stith to authorize the City Manager to enter into a contract with JCI Jones Chemicals, Inc., in the amount of \$270,000 for providing the City with its estimated annual requirements for Liquid Sodium Hydroxide; and

To authorize the City Manager to modify the contract before execution provided that modifications do not increase the dollar amount of the contract and the modifications are consistent with the general intent of the existing version of the contract was approved at 7:21 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

SUBJECT: FIRE LANE DESIGNATION AT HONEY'S RESTAURANT

MOTION by Mayor Pro Tempore Cheek seconded by Council Member Stith to adopt an ordinance to designate a Fire Lane at Honey's Restaurant was approved at 7:21 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

Ordinance #12855

SUBJECT: STREET ACCEPTANCE - GROVE PARK - LINKSIDE AND SOUTHPPOINT

MOTION by Mayor Pro Tempore Cheek seconded by Council Member Stith to authorize the City Manager to accept certain streets in Grove Park - Linkside and Southpoint, as listed below, for maintenance by the City of Durham was approved at 7:21 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

Grove Park - Linkside

Thorn Brook Court – from the centerline of Oak Grove Parkway north thru the cul-de-sac (169'); and

Piedmont Forest Court – from the centerline of Oak Grove Parkway west thru the cul-de-sac (289'); and

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Morning View Court – from the centerline of Oak Grove Parkway east thru the cul-de-sac (922’); and

Linkside Court – from the centerline of Morning View Court northwest thru the cul-de-sac (131’).

SOUTHPOINT

Renaissance Parkway – from the end of previous construction @ STA 33+85.87 west to the east curb line of NC Hwy 751 (3,386’).

SUBJECT: SETTING PUBLIC HEARING TO CONSIDER ORDERING PETITIONED IMPROVEMENTS

MOTION by Mayor Pro Tempore Cheek seconded by Council Member Stith to accept a certificate of sufficiency from the Manager of Engineering for each of the following petitions; and

To adopt a resolution setting a public hearing for September 15, 2003 to consider ordering each of the following improvements was approved at 7:21 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

Sewer Main on Green Lane Drive from Country Club Drive to Continental Drive;

Water Main on Long Leaf Drive from Pine Valley Drive North to the North Property Line of Tax Map 825-1-39;

Sewer Main on Marvin Drive from Farrington Road to West Property Line of Tax Map 484-4-12.

SUBJECT: ON-STREET PARKING – ANDERSON STREET

MOTION by Mayor Pro Tempore Cheek seconded by Council Member Stith to adopt an ordinance establishing no parking on the east side of Anderson Street, beginning at a point 440 feet south of south curb line of Bynum Street, if extended, and extending for a distance of 172 feet southward was approved at 7:21 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

Ordinance #12856

SUBJECT: STOP SIGNS

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MOTION by Mayor Pro Tempore Cheek seconded by Council Member Stith to adopt an ordinance to repeal the following ordinances was approved at 7:21 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

1. Repeal Ordinance #2077 (#821), adopted July 16, 1962, authorizing the installation of stop signs on Sprunt Avenue at Maryland Avenue, northeast and southwest corners; and
2. Repeal Ordinance #2086 (#1), adopted August 6, 1962, authorizing the installation of stop signs on Delaware Avenue at Sunset Avenue, northwest and southeast corners; and
3. Repeal Ordinance #2136 (#13), adopted January 21, 1963, authorizing the installation of stop signs on Delaware Avenue at Sunset Avenue, northwest and southeast corners

MOTION by Mayor Pro Tempore Cheek seconded by Council Member Stith to adopt an ordinance to authorize the installation of four-way stop signs at the following locations was approved at 7:21 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

1. Maryland Avenue at Sprunt Avenue, northeast, northwest, southeast, and southwest corners; and
2. Sunset Avenue at Delaware Avenue, northeast, northwest, southeast, and southwest corners

MOTION by Mayor Pro Tempore Cheek seconded by Council Member Stith to adopt an ordinance to authorize the installation of a stop sign on Oneluska Drive (Private) at Shoccoree Drive, southwest corner was approved at 7:21 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

Ordinance #s 12857 – 12858 -12859

SUBJECT: CONTROLLED PARKING RESIDENTIAL AREA – LAWSON STREET

MOTION by Mayor Pro Tempore Cheek seconded by Council Member Stith to adopt an ordinance to establish a Controlled Parking Residential Area on the south side of Lawson Street between Fayetteville Street and South Roxboro Street was approved at 7:21 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

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Ordinance #12860

**SUBJECT: REPEAL CONTROLLED PARKING RESIDENTIAL AREA –
CONCORD STREET**

MOTION by Mayor Pro Tempore Cheek seconded by Council Member Stith to adopt an ordinance rescinding ordinance #10027, adopted December 6, 1993, which authorized Controlled Residential Parking on Concord Street from Formosa Avenue to Lawson Street was approved at 7:21 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

Ordinance #12861

**SUBJECT: SUBRECIPIENT AGREEMENT FOR FY 2003-2004 WITH THE
DURHAM AFFORDABLE HOUSING COALITION, INC.**

MOTION by Mayor Pro Tempore Cheek seconded by Council Member Stith to authorize the City Manager to execute a performance based subrecipient contract with the Durham Affordable Housing Coalition in an amount not to exceed the maximum sum of \$52,440 to provide homeownership education workshops from the Community Development Block Grant funds (CDBG); and

To authorize the City Manager to make changes to the agreement which do not increase the agreement amount, lessen DAHC's duties, or extend the term of the agreement beyond June 30, 2004 was approved at 7:21 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

**SUBJECT: CONTRACT ST-216 MARTIN LUTHER KING JR. PARKWAY,
PHASE II CLEARING (ARCHDALE SECTION) - HOLMES
CONTRACTING, INCORPORATED**

MOTION by Mayor Pro Tempore Cheek seconded by Council Member Stith to authorize the City Manager to execute a contract with Holmes Contracting, Incorporated in the amount of \$180,474; and

To authorize the City Manager to modify the contract before execution provided that modifications do not increase the dollar amount of the contract and the modifications are consistent with the general intent of the existing version of the contract was approved at 7:21 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

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**SUBJECT: PROPOSED EASEMENT AGREEMENT WITH THE ARMY
CORPS OF ENGINEERS FOR THE MASSEY CHAPEL ROAD
WATER MAIN**

MOTION by Mayor Pro Tempore Cheek seconded by Council Member Stith to authorize the City Manager to execute an easement agreement with the Army Corps of Engineers for Easement No. DACW21-2-03-3408, Easement for Pipeline Right-of-Way located on B. Everett Jordan Dam and Lake, North Carolina was approved at 7:21 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

**SUBJECT: CONTRACT FOR ERP SYSTEM EXTENDED CONSULTING
SERVICE CONTRACT WITH SOFTRESOURCES FOR PHASE III
– VI SERVICES**

MOTION by Mayor Pro Tempore Cheek seconded by Council Member Stith to authorize the City Manager to execute the ERP Systems Extended Services Consulting Services Contract with SoftResources in the amount of \$100,000 for Phase III – VI Services; and

To authorize the City Manager to modify the contract before execution provided that modifications do not increase the dollar amount of the contract and the modifications are consistent with the general intent of the existing version of the contract was approved at 7:21 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

SUBJECT: DOWNTOWN SPECIAL EVENTS STRATEGIC PLAN

To receive a presentation on the Downtown Special Events Strategic Plan.

Note: A presentation was received at the August 21st Work Session.

SUBJECT: BARNES AVENUE UPDATE

To receive a report on the Barnes Avenue update.

Note: A report was received at the August 21st Work Session.

SUBJECT: BIRCHWOOD COMMUNITY CENTER UPDATE

To receive a report on the structural evaluation at Birchwood Community Center.

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Note: *A report was received at the August 21st Work Session)*

SUBJECT: ROBERT NASH

To receive comments from Robert Nash on restoring the old Fire Substation #3 on North Driver Street.

Note: *This citizen did not appear at the August 21st Work Session.*

SUBJECT: MARLA TUCHINSKY

To receive comments from Marla Tuchinsky on stormwater concerns on her property.

Note: *Comments were received at the August 21st Work Session.*

SUBJECT: MARY MORRIS

This citizen did not appear at the August 21st Work Session.

SUBJECT: REPORT ON CITIZEN'S COMPLAINT - #J-142, SYLVESTER G. BROOKS

To receive a report on Citizen's Complaint #J-142, Sylvester G. Brooks, 1108 South Roxboro Street.

Note: *This item was referred back to the Administration.*

SUBJECT: STREET CLOSING – ALLEY BETWEEN BRANT STREET AND FORMOSA AVENUE (SC02-06)

MOTION by Mayor Pro Tempore Cheek seconded by Council Member Stith to set a public hearing on September 15, 2003 to receive public comment; and

To adopt a resolution declaring the intent of the City Council of the City of Durham to consider permanently closing 0.10 acre (4,518.9 Square Feet) of an unnamed alley extending between Brant Street and Formosa Avenue, East of Concord Street and West of Fayetteville Street was approved at 7:21 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

Resolution #9032

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[GENERAL BUSINESS AGENDA]

SUBJECT: CONTRACT EXTENSION FOR MUTUAL COMMUNITY SAVINGS BANK, INC. – SMALL BUSINESS LOAN PROGRAM

To approve the extension of the existing contract with Mutual Savings Bank, Inc.

Mayor Bell noted he would be abstaining from voting on this item since he is Chairman of the Board for Mutual Community Savings Bank, Inc.

Council Member Clement disclosed that he is a shareholder at the bank.

City Attorney Blinder explained why Council Member Clement did not need to abstain from voting on this matter.

Mayor Pro Tempore Cheek made comments about the small business loans noting staff should work harder to make sure the process of contracting and record keeping does not fall through the cracks.

Gwendolyn Gillespie, of the Housing Department, noted per instructions at the Work Session, the administration amended the motions to just include the extension of the existing contract.

City Clerk Gray asked for clarification on the motion [purpose of contract and timeframe].

Assistant City Manager Laisure noted the contract is for the servicing, repackaging and collection of commercial loans from February 18, 2003 – March 31, 2004 as outlined in staff's memo dated August 25, 2003.

MOTION by Council Member Clement seconded by Council Member Edwards to approve the extension of the existing contract with Mutual Community Savings Bank, Inc. for the repackaging, loan servicing and collection, by foreclosure, if necessary, of the current commercial loans to March 31, 2004 for the Small Business Loan Program; and

To authorize the extension amendment upon completion of any applicable review process was approved at 7:27 p.m. by the following vote: Ayes: Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Abstention: Mayor Bell. Absent: None.

SUBJECT: FREDERICK WARSAW

To receive a report from the administration on Frederick Warsaw's comments to replace the ground cover to include trees in the back of his home and neighbors' home.

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Katie Kalb, Public Works Director, summarized that the Warsaws and the Princes are requesting compensation for trees on the City's public right-of-way, options have been signed by both parties for the construction and permanent easements, utility easements, drainage and loss of trees on their private property. She noted the estimate is \$14,025 to replace 33 Leyland Cypress trees from Kiefer Landscaping and staff's recommendation is to not change the existing policy regarding compensation in the public right-of-way.

Council held discussion on the policy.

Frederick Warsaw provided Council with a handout addressing slides 4, 5, 7 and 8. Also, he noted that he hasn't signed anything nor received any payment. He urged Council to pay for trees, replace or pay for the ground covering.

Larry Prince, of 23 St. Andrews Court, expressed a concern with the noise level noting the Leyland Cypress trees are needed for a buffer.

Public Works Director Katie Kalb discussed the road widening, sidewalk and survey issues. She noted after the project is bided on, the administration would try to do some additional landscaping on the slopes if funds are available. She noted the Warsaws/Princes have been or will be compensated for the use of their property; construction easement as well as any vegetation removed on their private property.

Council held discussion on sidewalks, surveys, sewer easements, right-of-way, and the issue of other properties impacted.

Katie Kalb stated the Warsaws would be compensated \$8,178 for the construction, drainage and utility easements and \$7,572 for the loss of 19 trees not on the public right-of-way.

Larry Prince informed Council that he has been compensated for the trees not in the right-of-way, but the issue is the Leyland Cypress as the buffer.

Mayor Bell expressed a concern with the aesthetics along MLK Parkway.

MOTION by Mayor Pro Tempore Cheek seconded by Council Member Stith to not change the existing policy regarding compensation in the public right-of-way was approved at 8:03 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Cole-McFadden, Edwards and Stith. Noes: Council Member Clement. Absent: None.

SUBJECT: CAC – COLLIER ESTATES, CHENAULT, ALSTON AVENUE AND HOMEWOOD

To receive a report from the administration on Charlene Best's comments on several issues in their neighborhood.

Note: *A report was received from the Administration at the August 21st Work Session.*

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SUBJECT: ROGER MONTEITH

To receive a report from the administration on Roger Monteith's comments to appeal the decision to eliminate curbside recycling at Parsons Chase.

Note: A report was received from the Administration at the August 21st Work Session.

SUBJECT: CITIZEN'S REVIEW BOARD

Assistant City Attorney Patrick Baker briefed Council on the changes for this item.

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cheek to amend the Rules of Procedure of the Citizen's Review Board and to change the name of the Citizens' Review Board to the Civilian Police Review Board was approved at 8:06 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

SUBJECT: SALES AND SOLICITATION ORDINANCE
(CONTINUED FROM THE AUGUST 18TH CITY COUNCIL MEETING)

To receive a report on the Sales and Solicitation Ordinance.

Finance Director Ken Pennoyer made comments on this item.

Attorney George Miller, Jr., representing The Herald-Sun, urged Council to enforce a state law and spoke in opposition to banning street vendors in the roadway.

Ed Rose, of The Herald-Sun, made comments on the safety record of The Herald-Sun urging Council to remember vendors when considering the ordinance.

Susan Purvis, of 2515 Holloway Street, spoke in support of street sales.

Toby Barfield, of The Herald-Sun, thanked Council for their support and urged Council to not deprive street vendors from their livelihood.

Council Member Cole-McFadden spoke in support of street sales.

Mayor Pro Tempore Cheek asked questions that were answered by Ed Rose pertaining to the street vendors for The Herald-Sun [number of street vendors, insurance benefits, why they are independent contractors rather than employees of The Herald-Sun, etc.]

Council Member Best asked Attorney Miller to explain what he is proposing as an amendment to the ordinance.

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Attorney Miller made comments noting there could be a regulatory process for newspaper vendors and panhandlers as to time, appearance and location. Also, he made comments on the proposed ordinance drafted for newspaper vendors.

Council Member Stith noted a total prohibition would be an erosion of our basic rights.

Council Member Clement spoke in opposition to making changes to the current ordinance.

Mayor Pro Tempore Cheek noted activity in the roadway would create a danger and a distraction.

Mayor Bell asked the City Attorney if there is any condition that it would be less dangerous to have individuals in the roadway.

Assistant City Attorney Richard Weintraub briefed Council on the ordinance proposed a year or so ago noting that staff recommended isolating roads that were thought to be the most dangerous. He noted the code had a permitting regiment for certain vendors which the State Attorney General ruled it to be illegal.

Police Attorney Toni Smith discussed the old ordinance requiring the use of an orange vest and the two state laws that prohibit people from obstructing traffic.

Mayor Bell made comments on applying certain standards for soliciting in the roadways [timeframe, permit fee and designated area].

Assistant City Attorney Weintraub made comments on the ordinance submitted by The Herald-Sun.

A motion was made by Mayor Pro Tempore Cheek to direct the City Attorney to bring forward an ordinance prohibiting all sales and solicitation in the right-of-ways of the City of Durham. Motion dies for a lack of a second.

A motion was made by Council Member Clement seconded by Council Member Cole-McFadden to maintain the current ordinance.

Council Member Stith made a friendly amendment to have a review on issues raised tonight.

Council Member Clement accepted friendly amendment to have quarterly reviews.

Mayor Bell noted the ordinance could be enhanced to focus on safety, the permit fee, time and location.

Council Member Best requested the administration to provide information on what other cities are doing.

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Council Member Edwards made comments about staff bringing back a couple of options in two cycles.

Mayor Bell suggested a subcommittee be established [Mayor Bell and Council Members Cole-McFadden and Best] to work with the administration on this matter.

Council Member Clement withdrew his motion.

MOTION by Mayor Pro Tempore Cheek seconded by Council Member Stith to receive a report on the Sales and Solicitation Ordinance; and

To establish a subcommittee consisting of Mayor Bell and Council Members Best and Cole-McFadden to look at the issue of Sales and Solicitation was approved at 9:06 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Cole-McFadden, Edwards and Stith. Noes: Council Member Clement. Absent: None.

SUBJECT: LEASE OF BURTON PARK TO THE DURHAM HOUSING AUTHORITY

To authorize the City Manager to enter into and make changes to a lease agreement with the Durham Housing Authority to lease Burton Park to DHA for one year, September 1 2003 to September 1, 2004 and that the lease be re-examined by the City and Durham Housing Authority prior to renewal.

Acting Parks & Recreation Director Joy Guy provided Council with a revised handout briefing Council on the lease agreement and noted staff will report back in two months on the comprehensive review of state and local laws. She discussed staff's original recommendation and alternative recommendation.

Mayor Bell reported on a meeting he attended along with Council Member Clement a couple of months ago with McDougald Terrace residents where concerns were raised relative to trespassers at Burton Park and another meeting with the DHA, Police Department, City Attorney and the City administration to discuss solutions.

A motion was made by Council Member Clement seconded by Council Member Stith to approve this item.

For clarification, it was indicated that the Alternative recommendation is the motion on the floor.

Council Member Stith raised a concern that an out clause is not in the agreement.

Council Member Best asked staff who would be responsible for the maintenance and liability at Burton Park.

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Assistant City Manager Laisure stated Durham Housing Authority would be responsible for both issues.

Frank Meacham, Durham Housing Authority Interim Director, noted issues relating to liability and maintenance will have to be reviewed prior to signing the lease agreement.

Acting Parks & Recreation Director Joy Guy informed Council that the clause, within a 30-day notice that either party could back out of the lease, is not in the agreement, but will address this issue with the City Manager's Office. For clarification, she outlined the alternative motion on the floor [to lease Burton Park to DHA for one year and the lease will be re-examined by City and DHA staff prior to renewal and to direct staff to do a comprehensive review].

MOTION by Council Member Clement seconded by Council Member Stith to authorize the City Manager to enter into and make changes to a lease agreement with the Durham Housing Authority to lease Burton Park to DHA for one year, September 1, 2003 to September 1, 2004 and that the lease be re-examined by the City and Durham Housing Authority staff prior to renewal; and

To direct staff to do a comprehensive review of existing law and if appropriate, bring recommended ordinance changes within two (2) months was approved at 9:23 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

[GENERAL BUSINESS AGENDA - PUBLIC HEARINGS]

SUBJECT: FY 2002-2003 DRAFT CONSOLIDATED ANNUAL PERFORMANCE AND EVALUATION REPORT (CAPER) PUBLIC HEARING

To receive public comments on the FY 2002-2003 Consolidated Annual Performance and Evaluation Report (CAPER).

Housing Director Charlene Montford briefed Council on this item. She noted changes have been made to the draft report since 30 days ago.

Mayor Bell opened the public hearing.

Diane Wright, representing Campaign for Decent Housing, requested that the public hearing be continued for one cycle to digest changes. She expressed a concern with the spending level of the federal housing and community development funds and housing staff, the City's Tenant/Rental Assistance program that has not started, and the matter of there not being enough renovation of homes.

Jack Preiss, of 2722 McDowell Road, raised a concern noting there has been little housing production.

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Diane Catotti, of 4747 Deepwood Circle, noted goals were not met for many programs [new construction, rehab or affordable housing].

Stella Adams, of 4128 Cobblestone Place, requested that the public hearing be extended, expressed concern with low rental and homeownership opportunities and the amount of money not being spent within the allotted timeframe. Also, she suggested quarterly updates be given on the CAPER rather than annually.

Walter _____, 1119 Clarendon Street, urged Council to ask the residents, landlords and tenants what is it that you need help in doing to bring homes up to standards, to review how funds are being distributed and requested funds for the Walltown community.

Council Member Cole-McFadden expressed concern regarding the neighborhood liaison staff person not marketing what the Housing Department has to offer, not enough expenditure of money for emergency repair programs and staff's philosophy about Durham.

Council Member Stith made comments on the issue of community outreach for housing rehab and new construction asking staff to look at smaller/larger scale projects given the need throughout the community and to receive input from neighborhoods and business communities on how to spend funds.

Mayor Bell requested staff to report back on what is the maximum the City can use for the administration, is staff in place to manage the dollars [projects]; what is staff proposing for rental vs. homeownership and how rehab programs are going to be up fitted.

Council Member Clement requested more information on the inspection program and spoke in support of rental housing.

City Manager Conner noted the deadline for submitting the CAPER report is September 29, 2003.

MOTION by Council Member Clement seconded by Council Member Edwards to receive public comments on the FY 2002-2003 Consolidated Annual Performance and Evaluation Report (CAPER); and

To continue the public hearing without further advertising to the September 15, 2003 City Council Meeting [staff will provide revised draft of CAPER] was approved at 9:58 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

MOTION by Council Member Best seconded by Mayor Pro Tempore Cheek to extend the meeting beyond 10:00 p.m. was approved at 10:00 p.m. by the following vote: Ayes:

September 2, 2003

Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

**SUBJECT: LAND USE PLAN AMENDMENT - WARREN CREEK (A03-05) –
R. L. HORVATH ASSOCIATES FOR BENNIE GLENN – EAST
SIDE OF GUESS ROAD AT ITS SOUTHEAST INTERSECTION
WITH VICTORY BOULEVARD**

To receive public comments on Plan Amendment Case A03-05 (Warren Creek); and

To adopt a resolution to change the Land Use designation on the Future Land Use Map of the West/Northwest Durham Plan from Commercial to Medium Density Residential as described in Case A03-05.

Planning Department Recommendations: Approval

Planning Commission Recommendations: Approval (12-1)

Planning Director Frank Duke briefed Council on the staff report.

Mayor Bell opened the public hearing.

Ron Horvath, representing the applicant, spoke in support of plan amendment.

Mayor Bell declared the public hearing closed.

MOTION by Council Member Clement seconded by Council Member Stith to receive public comments on Plan Amendment Case A03-05 (Warren Creek); and

To adopt a resolution to change the Land Use designation on the Future Land Use Map of the West/Northwest Durham Plan from Commercial to Medium Density Residential as described in Case A03-05 was approved at 10:02 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

Resolution #9033

**SUBJECT: LAND USE PLAN AMENDMENT – LYNN HOLLOW II (A03-07) –
JOHN R. MCADAMS COMPANY FOR LYNN HOLLOW, LLC C/O
BOB ZUMWALT – SOUTH SIDE OF GIBSON ROAD, EAST OF
ITS INTERSECTION WITH LYNN ROAD**

To receive public comments on Plan Amendment Case A03-07 (Lynn Hollow II); and

To adopt a resolution to change the Land Use designation on the Future Land Use Map of the Southeast Durham Plan from Medium Density Residential to Low Density as described in Case A03-07.

September 2, 2003

Planning Department Recommendations: Approval

Planning Commission Recommendations: Approval (13-0)

Planning Director Frank Duke briefed Council on the staff report.

Mayor Bell opened the public hearing. There being no one to speak in support or against this item, the Mayor declared the public hearing closed.

MOTION Council Member Clement seconded by Council Member Best to receive public comments on Plan Amendment Case A03-07 (Lynn Hollow II); and

To adopt a resolution to change the Land Use designation on the Future Land Use Map of the Southeast Durham Plan from Medium Density Residential to Low Density as described in Case A03-07 was approved at 10:03 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

Resolution #9034

**SUBJECT: REZONING MATTER CASE P02-75 - ABERNATHY TRACT –
DAVID DANIEL CONSTRUCTION – 5247 BARBEE CHAPEL
ROAD**

To receive public comments on rezoning Case P02-75 (Abernathy Tract); and

To adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in rezoning Case P02-75 out of RD; F/J-B and placing same in and establishing same as PDR 6.024.

Planning Department Recommendation: Approval

Zoning Committee Recommendation and Vote: Approval - (5-1)

[Valid protest petition has been withdrawn]

Planning Director Frank Duke briefed Council on the staff report noting additional committed elements have been added to the development plan since the August 4, 2003 City Council Meeting relative to maximum of units, site layout, maximum buildings, roadway improvements, construction of a left turn lane at Barbee Chapel Road, 10' right-of-way dedication on Barbee Chapel Road, a modification that there would be no dwelling units located in the transitional use area adjacent to the Downing Creek subdivision, 50' building setback along Downing Creek subdivision boundary line, open space, 35' building setback along Barbee Chapel Road and 8 town home units within the transitional use area. He noted proposal is consistent with adopted plan and staff's recommendation is for approval.

Mayor Bell opened the public hearing.

September 2, 2003

Proponents

Paul Meder, representing the applicant, spoke in support of this rezoning request. He made comments on the number of units (28), meetings held with Downing Creek subdivision, withdrawal of protest petition and improved screening for adjacent property owners. He urged Council to consider this rezoning request.

Rebecca Boyd, representing the Downing Creek Community Association, spoke in support of this item commenting on withdrawal of protest petition. She noted the applicant has agreed to enlarge retention pond, improve drainage, increase evergreen screening along Barbee Chapel Road and increase building setback. She asked the Planning Department and Council to remember concerns as future development is proposed in this area.

No one spoke in opposition to this item.

Mayor Bell declared the public hearing closed.

MOTION by Council Member Clement seconded by Council Member Edwards to receive public comments on rezoning Case P02-75 (Abernathy Tract); and

To adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in rezoning Case P02-75 out of RD; F/J-B and placing same in and establishing same as PDR 6.024 was approved at 10:13 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

SUBJECT: ORDERING PETITIONED IMPROVEMENT - SIDEWALK ON OBIE DRIVE

Lee Murphy, of the Public Works Department, noted this public hearing was continued from the August 18, 2003 City Council Meeting and the questions raised by Mr. Norman Richardson at that meeting have been answered. Also, he provided the City Clerk with a letter from the Woodlake Homeowners Association indicating opposition to a future assessment, but not to the improvement.

As this was the time and place set for the public hearing, anyone interested was given the opportunity to be heard. There being no further objections and/or allegations, the public hearing was declared closed.

MOTION by Council Member Stith seconded by Council Member Edwards to receive public comments; and

September 2, 2003

To adopt a resolution ordering Sidewalk on Obie Drive (Both Sides) from Barbee Road to Fayetteville Road was approved at 10:14 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

SUBJECT: ORDERING PETITIONED IMPROVEMENT - CURB, GUTTER AND PAVING AND WATER AND SEWER LATERALS ON OBIE DRIVE

Lee Murphy, of the Public Works Department, noted this public hearing was continued from the August 18, 2003 City Council Meeting and the questions raised by Mr. Norman Richardson at that meeting have been answered. Also, he provided the City Clerk with a letter from the Woodlake Homeowners Association indicating opposition to a future assessment, but not to the improvement.

As this was the time and place set for the public hearing, anyone interested was given the opportunity to be heard. There being no further objections and/or allegations, the public hearing was declared closed.

MOTION by Council Member Stith seconded by Council Member Best to receive public comments; and

To adopt a resolution ordering Curb, Gutter and Paving and Water and Sewer Laterals on Obie Drive from Barbee Road to Fayetteville Road was approved at 10:15 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cheek and Council Members Best, Clement, Cole-McFadden, Edwards and Stith. Noes: None. Absent: None.

There being no further business to come before the City Council, the meeting was adjourned at 10:15 p.m.

Linda E. Bratcher
Deputy City Clerk

D. Ann Gray, CMC
City Clerk